

REMARKS

In the application claims 11-20 remain pending. Claims 1-10 have been canceled without prejudice.

No claims presently stand allowed. The reconsideration of the rejection of the claims is, however, respectfully requested.

Claims 11-12 and 14-20 stand rejected under 35 U.S.C. § 103 as being rendered obvious by Altendahl (U.S. Patent No. 6,571,213) as modified by Landvater (U.S. Patent No. 6,609,101). Claim 13 stands rejected under 35 U.S.C. § 103 as being rendered obvious by Altendahl as modified by Landvater and further modified by Dietrich (U.S. Patent No. 5,216,593).

In response, it is respectfully submitted that a rejection under 35 U.S.C. § 103 requires that the references being relied upon disclose the claimed invention “as a whole,” i.e., each and every element considering each and every word. This requirement that the claimed invention be considered “as a whole” is meant to prevent evaluation of an invention part by part, i.e., breaking an invention into its component parts and then merely finding a reference containing one part, another reference containing another part, etc., and to prevent the impermissible use of the specification of the applicant as a template to combine these parts for the purpose of deprecating the claimed invention. Thus, to assure that such “hindsight reasoning” is not used when assessing the patentability of a claimed invention, a rejection under 35 U.S.C. § 103 also requires a demonstration that an artisan of ordinary skill in the art at the time of the invention, with no knowledge of the claimed invention, would have selected the various parts from the references and combined them in the claimed manner. In other words, the mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990).

Considering now Altendahl, within Altendahl a single geographic destination for an item is required to be predetermined (e.g., Chicago) and the system then merely functions to use various criteria to select a “route,” defined within Altendahl to be a parcel carrier (e.g., UPS) and parcel carrier service (e.g., ground), to move the item to that geographic destination. (Col. 4, lines 17-32). Accordingly, Altendahl fails to disclose, teach, or suggest at least the claimed constructing of a plurality of alternative fulfillment plans for moving an item from a sourcing point to each of plural geographic locations within the supply chain and then evaluating each of the constructed plurality of alternative fulfillment plans against a predetermined criteria to select for implementation one of the constructed plurality of alternative fulfillment plans that most closely meets the predetermined criteria to thereby position an item that was the subject of the order at one of the plural geographic locations within the supply chain. This has been acknowledged in the Office Action.

Turning now to Landvater, while Landvater discloses a system and method for moving items to a plurality of retail stores, Landvater, like Altendahl, does not disclose, teach, or suggest the claimed constructing of a plurality of alternative fulfillment plans for moving an item from a sourcing point to each of plural geographic locations within the supply chain and then evaluating each of the constructed plurality of alternative fulfillment plans against a predetermined criteria to select for implementation one of the constructed plurality of alternative fulfillment plans that most closely meets the predetermined criteria to thereby position an item that was the subject of the order at one of the plural geographic locations within the supply chain. Rather, in Landvater, a system is used to forecast replenishment needs at various retail stores and the forecasts represent projected shipments to each of the various retail stores. The items shipped to each of the retail stores are received into inventory by the retail stores. Thus, based on the projected

replenishment needs, a supplier provides replenishment shipments *directly* to each of the retail stores in the amounts and at times that have been calculated. (Col. 8, lines 26-47).

From the foregoing it will be appreciated that, since Landvater discloses a system in which the replenishment needs of each retail store are calculated to thereby allow replenishment shipments to be made directly to each of the retail stores, i.e., *the destination of an item shipment is predetermined* with only the amount of items to ship and timing of the shipment being calculated, Landvater cannot be said to disclose, teach, or suggest, those claim elements that have been acknowledged to be missing from Altendahl. In Landvater there is no disclosure, teaching, or suggest of constructing a plurality of alternative fulfillment plans for moving an item from sourcing point to each of a plurality of geographic locations within a supply chain and then selecting for implementation one of a constructed plurality of alternative fulfillment plans that most closely meets a predetermined criteria where the selected one of the plurality of alternative fulfillment plans is used to position an item at one of a plurality of geographic locations within a supply chain to thereby make the item available for use in meeting an order for that item, i.e., *a system in which the destination of an item shipment is not determined until after alternative fulfillment plans are constructed and then evaluated*. Thus, since Landvater, like Altendahl, discloses a system in which the destination of the replenishment shipment is predetermined, Landvater, like Altendahl, teaches away from the invention set forth in the claims.

In sum, it is respectfully submitted that the mere disclosure within Landvater of plural retail stores cannot be said to evidence that it would have been obvious to modify Altendahl to arrive at the invention claimed. More particularly, the mere disclosure within Landvater of moving items to plural retail stores cannot be said to evidence that an artisan of ordinary skill in the art at the time of the invention, with no knowledge of the claimed invention, would have been motivated to modify Altendahl to arrive at the invention claimed for the simple reason that

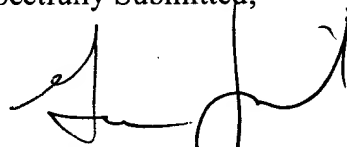
Landvater never discloses, teaches, or suggests the very claim elements that have been acknowledged to be missing from Altendahl. Without the disclosure, teaching, or suggestion of these elements within Landvater, it is submitted that the determination of obviousness could only have been arrived at through the impermissible use of hindsight reasoning, i.e., the use of the disclosure of the applicant to supply the teachings that are missing from both Altendahl and Landvater. For at least this reason it is respectfully submitted that the rejection of the claims must be withdrawn.

CONCLUSION

It is respectfully submitted that the application is in good and proper form for allowance. Such action of the part of the Examiner is respectfully requested. Should it be determined, however, that a telephone conference would expedite the prosecution of the subject application, the Examiner is respectfully requested to contact the attorney undersigned.

The Commissioner is authorized to charge any fee deficiency or credit overpayment to deposit account 50-2428 in the name of Greenberg Traurig.

Respectfully Submitted;



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